

May 13, 2020

Interested Parties:

The Regional Climate Protection Authority (RCPA) invites proposals from qualified professional service organizations to provide Program Operator services for the regional Bay Area Regional Energy Network (BayREN) program, Water Upgrades \$ave. Water Upgrades \$ave makes installing water conservation improvements easy with an inclusive financing on-bill offer that most eligible utility customers trust and will accept. As outlined in the scope of work, the provision of Program Operator services includes the following individual objectives:

- Work in partnership with RCPA and BayREN to finalize Water Upgrades \$aves protocols and processes to ensure the success of the Program for all parties, including most critically water customers.
- Outreach and engagement with potential Participants that results in signed Participant Agreements and completed projects.
- Ensure Improvements installed at Participants' properties are appropriate, cost effective, and correctly installed.
- Ensure paperwork and data are complete, accurate, and available in real time.
- Provide excellent Customer Service.

This will be a pay-for-performance contract with the Program Operator. While necessary services that are not directly tied to completed projects, such as marketing, will be paid based on time and materials or milestones, payment for the services above primarily will be paid based on the number of completed installations.

Proposals must be submitted at or before 5:00 p.m. on June 30, 2020.

One (1) PDF proposal with electronic signature should be delivered by email to:  
[chris.cone@rcpa.ca.gov](mailto:chris.cone@rcpa.ca.gov)

Proposals and amendments to proposals received after the date and time specified above will not be considered. Questions regarding this Request for Proposals will be accepted through May 26, 2020 and should be directed in writing to Chris Cone via email at [chris.cone@rcpa.ca.gov](mailto:chris.cone@rcpa.ca.gov)

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

Sincerely,

A handwritten signature in black ink that reads "Suzanne Smith". The script is cursive and fluid, with the first name "Suzanne" and last name "Smith" clearly legible.

Suzanne Smith  
Executive Director RCPA



Sonoma County Transportation Authority  
Regional Climate Protection Authority

## **REQUEST FOR PROPOSALS**

### **Bay Area Regional Energy Network (BayREN) Water Upgrades \$ave Program Operator**

#### **Regional Climate Protection Authority**

**411 King Street  
Santa Rosa, CA 95404**

**(707) 565-5373**

#### **Key RFP Dates**

**Issued: May 13, 2020**

**Pre-Proposal Meeting: May 21, 2020**

**Written Questions: May 26, 2020**

**Submit Proposals: June 30, 2020**

**Possible Interview Dates: July 10-11, 2020**

## TABLE OF CONTENTS

<b>SECTION 1: OVERVIEW .....</b>	<b>1</b>
Introduction .....	1
Background .....	2
Eligibility Requirements .....	3
Proposal Requirements.....	4
Appendices.....	5
Exceptions/Deviations .....	6
Debarment or Other Disqualification .....	6
<b>SECTION 2: INSTRUCTIONS TO PROPOSERS.....</b>	<b>6</b>
Examination of Proposal Documents.....	6
Addenda .....	6
Clarifications .....	6
Pre-Proposal Meeting .....	7
RFP and Contract Terms .....	7
Submittal Procedure .....	8
Pre-Contractual Expenses .....	9
Joint Offers.....	9
Insurance and Agreement Provisions .....	9
Levine Act.....	10
Lobbying.....	10
<b>SECTION 3: EVALUATION AND AWARD.....</b>	<b>10</b>
Evaluation Procedure.....	10
Award .....	12
Notification of Award.....	12
<b>SECTION 4: PROTESTS .....</b>	<b>12</b>
Filing of Protest.....	12

Protest Resolution Process ..... 13

**Informal resolution** ..... 13

**Written response** ..... 13

**No Stay of Procurement Action during a Protest**..... 13

Remedies after an Award ..... 13

**SECTION 5: TENTATIVE SCHEDULE ..... 14**

**EXHIBIT A: DRAFT SCOPE OF WORK ..... 15**

    Program Objective ..... 15

    Program Resources ..... 15

        Task A: Program Operator Onboarding ..... 16

        Task B: Marketing and Customer Service ..... 17

        Task C: Program Contractors ..... 18

        Task D: Program-Provided Customer Relationship Management Platform..... 19

        Task E: Improvement Installation Oversight..... 19

        Task F: Program Management, Data Oversight, Reporting, and Ongoing Customer Support..... 24

    Program Schedule ..... 26

**EXHIBIT B: COST EXERCISE TEMPLATE ..... 27**

**EXHIBIT C: BLACKOUT NOTICE ..... 28**

**EXHIBIT D: STANDARD AGREEMENT FOR CONSULTING SERVICES..... 29**

**EXHIBIT E: PROGRAM MANUAL ..... 40**

**EXHIBIT F: CONTRACTOR AGREEMENT ..... 41**

## SECTION 1: OVERVIEW

### Introduction

The Regional Climate Protection Authority (RCPA) is requesting proposals (RFP) for professional service providers to fill the Program Operator role for the BayREN program Water Upgrades \$ave (Program). Background on the Program is discussed in the Program Manual attached as Exhibit E.<sup>1</sup> All Bidders are encouraged to review this document.

RCPA is seeking Operator services for the first three years of the Program, with the option to extend into years four and five. This will be a pay-for-performance contract. The total amount payable to the Consultants will include payment for tasks agreed to as time and materials milestone billing and payment for the services agreed to as pay-for-performance based on the number of completed installations. For example, if negotiations with selected bidder result in time and materials billings not to exceed \$60,000 and a per project fee of \$150 per Single Family Participant and \$1,000 per Multifamily Participant with a \$20 charge per unit inspected, the selected bidder would earn total Year One compensation of \$128,400 if the Program achieves its Year One target of completing 400 Single Family and 6 Multifamily Projects each with 20 units. Under the same terms, total Year Two compensation would be \$171,000 and Year Three compensation would be \$273,600 if the Program achieves its Year Two and Year Three targets. The following table summarizes Program enrollment targets for its first five years.

Year of Operation	Total # of Participating Utilities	# of Residential Units/Year
Year 1	2	400 SF; 120 MF
Year 2	5 (3 new)	1,000 SF; 300 MF
Year 3	8 (4 new)	1,600 SF; 480 MF
Year 4	12 (4 new)	2,400 SF; 720 MF
Year 5	16 (4 new)	3,200 SF; 960 MF
<b>Total</b>	<b>16</b>	<b>8,600 SF; 2,580 MF</b>

The proposals submitted in response to this RFP will be used as a basis for selecting the Program Operator for this Program. Bidders shall address the requested work scope in detail and are also encouraged to propose approaches and strategies that the bidder believes will improve the Program, services offered, and or Bidder's ability help the Program meet its goals. Submitted

<sup>1</sup> See Water Upgrades \$ave Program Manual, Section 2: About the Program.

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

proposals will be evaluated and ranked according to the criteria provided in Section 3, “Evaluation and Award,” of this RFP.

Negotiations may or may not be conducted with proposers; therefore, the proposal submitted should contain the proposer’s most favorable terms and conditions since the selection and award may be made without discussion with any proposer. Bidders shall note all exceptions taken to this RFP including the contract terms and conditions of the contract included in Exhibit D. It is the intent of the RCPA to award a contract to the best-qualified firm that demonstrates experience in delivering Program Operator services with the most competitive prices to establish and grow a customer-side water efficiency investment program that is attractive and sustainable.

This RFP does not commit the RCPA to enter into a contract and the RCPA is not responsible for any costs incurred in preparation and submission of Proposals or in anticipation of a contract.

The RCPA reserves the right to:

1. Reject any or all submittals
2. Issue subsequent Requests for Proposals
3. Alter the Selection Process Dates
4. Remedy technical errors in the RFP process
5. Investigate the qualifications of all firms under consideration
6. Confirm any part of the information furnished by a Proposer
7. Obtain additional evidence of managerial, financial or other capabilities
8. Approve or disapprove the use of particular subcontractors
9. Negotiate with any, all, or none of the Proposers
10. Solicit best and final offers from all or some of the Proposers
11. Award a contract to one or more Proposers
12. Accept other than the lowest Proposal
13. Waive informalities and irregularities in Proposals

## **Background**

The Sonoma County Regional Climate Protection Authority (RCPA) is governed by a twelve-member Board of Directors comprised of representatives from the Sonoma County Board of Supervisors and Council Members from each of the county’s nine cities. The RCPA coordinates climate protection activities countywide performing important related functions including advocacy, project management, planning, finance, grant administration, and research. The RCPA coordinates the

activities of local jurisdictions with regional, state, and federal entities at both policy and administrative levels.

Since 2013, RCPA has been the Sonoma County representative to the Bay Area Regional Energy Network (BayREN), and served as BayREN program manager for three Water Bill Savings pilots and the forthcoming regional BayREN program Water Upgrades \$ave.

Led by the Association of Bay Area Governments (ABAG), the BayREN is a collaboration of the nine counties that make up the San Francisco Bay Area; BayREN member counties include Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. BayREN provides regional-scale energy efficiency programs, services, and resources that deliver targeted, integrated, and regional-scale climate solutions focused on energy, water, and resilience. BayREN is funded by utility ratepayer funds through the California Public Utilities Commission, as well as other sources, drawing on the expertise, knowledge, and proven track record of Bay Area local governments. BayREN fills existing utility program gaps and develops flexible and innovative programs that build on local government values and serve constituents needs.

## **Eligibility Requirements**

This RFP is open to all interested firms. Firms must certify in a cover letter that it meets the following conditions:

1. Is not in litigation adverse to RCPA or the County of Sonoma or in other litigation that may have a significant and adverse impact on the ability to perform services for RCPA.
2. Does not represent clients in litigation adverse to RCPA or the County of Sonoma or in other litigation that may have a significant and adverse impact on the ability to perform services for RCPA.
3. Has the resources and commitment to complete all components of the program in a timely manner, as outlined in the Scope of Work.
4. Maintains all data at rest and in transit with processes and protocols the meet requirements of California and other applicable laws and regulation for personal identifying information.
5. RCPA requires that the professional who signs the proposal cover letter as the program manager certify that he or she will be present at all meetings requested by RCPA staff members and will fully participate in the day-to-day management of the contract.



## Proposal Requirements

Please provide one (1) PDF version with electronic signature, to [chris.cone@rcpa.ca.gov](mailto:chris.cone@rcpa.ca.gov) no later than 5:00 p.m. on June 30, 2020. The proposal should not exceed 30 written (electronic) pages using a minimum font size of 11 (excluding cover letter, proposal cover, table of contents and supplemental information, such as firm brochures and resumes). Proposals shall be organized using the following format:

1. **Cover Letter:** Identify the prime consultant (including legal name, address, phone, and type of entity), address the Eligibility Requirements stated above, and describe any proposed subcontract arrangements. Please identify the person who is authorized to negotiate for the team and indicate that the proposal represents a firm binding offer for at least 90 days.
2. **Key Staff:** Identify a single point of contact (program manager) and all key team members, including relevant experience. Include a statement that key team members will not be removed or reassigned without prior approval of RCPA. Provide an organization chart of how the key staff is structured within the organization, resumes for key personnel, and include all specialty sub-consultants that would be expected to be used on the program.
3. **Program Understanding and Approach:** Summarize your understanding of the Program Operator's role in providing requested services and highlights of your proposed approach. (Limit: one-page.)
4. **Detailed Scope of Work and Management Approach:** This section of your proposal should present a detailed management approach to complete the tasks, including:
  - The detail on how to complete the tasks
  - The personnel assigned to each task
  - Best in class customer service
  - Strong field presence (on staff or subcontracted) for program marketing/outreach, site visits and field inspections
  - Use of a shared Customer Relationship Managements (CRM)/IT platform to record and report on project and Program activity using dashboards and standard reporting tools
  - Oversight of water efficiency retrofits in single family and multifamily buildings and with drought tolerant landscaping
  - Any activities Operator may propose to develop its own leads from Partner Utility provided Eligible Customer and High User lists

This section should also discuss bidder's approach to requested pricing and ability to provide the majority of requested project services as pay-for-performance.

5. **Program Schedule:** Please respond to the proposed program phasing schedules, timeline for completion of major program milestones and tasks, and key dates in the program schedule. Identify any missing tasks or specific concerns with the timeline.
6. **Cost Exercise:** Please complete the requested cost exercise for each proposed service. This will be a pay-for-performance contract with the Program Operator. While necessary services that are not directly tied to completed projects, such as marketing, will be paid based on time and materials or milestones, payment for Program Operator services primarily will be paid based on the number of completed installations. Use the Cost Exercise Template provided in Exhibit B.
7. **RFP and Contract Exceptions:** Bidders shall note all exceptions taken to this RFP including the contract terms and conditions of the contract included in Exhibit D. Requested exceptions must include proposed alternative language and must be identified in Bidder's proposal to be considered by RCPA; exceptions requested after award may be grounds for disqualification.
8. **References:** Provide at least three references (name, organization and *current* phone number and email) from recent relevant work (preferably program or programs operated during the previous three years) for the key program manager and designated staff members. Include a brief description of the programs associated with the reference, and the role of the respective team member.
9. **Professional Services Contract:** Please indicate your willingness to accept the terms and conditions in the RCPA's standard form of contract (see Exhibit D), or list those to which you take exception and, as appropriate, provide proposed alternate wording. It is not RCPA's intention to make substantial changes to the RCPA standard contract.

## Appendices

Information considered by proposers to be pertinent to this program, and which has not been specifically solicited in any of the aforementioned sections, may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

## **Exceptions/Deviations**

State any exceptions to, or deviations from, the requirements of this RFP and segregate “technical” exceptions from “contractual” exceptions. If proposers wish to propose alternative approaches to meeting the RCPA’s technical or contractual requirements, these should be thoroughly explained, referencing the relevant section(s) of the RFP.

## **Debarment or Other Disqualification**

Proposer must disclose any current or previous debarment or other disqualification as a vendor for any federal, state, or local entities. Proposer must describe the nature of the debarment/disqualification, including where and how to find such detailed information.

## **SECTION 2: INSTRUCTIONS TO PROPOSERS**

### **Examination of Proposal Documents**

By submitting a proposal, proposer represents that they have thoroughly examined and become familiar with the work required under this RFP and that the firm is capable of performing quality work to achieve the BayREN Water Upgrades \$ave Program Operator scope of work as set forth in Exhibit A.

### **Addenda**

Any changes to the requirements will be made by written addendum to this RFP. Addenda will be posted here:

<<Insert URL>>

Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. RCPA will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of verbal instructions.

### **Clarifications**

1. Examination of Documents: All relevant documents pertaining to the program are found in the appendices of this RFP.

## 2. Submitting Questions

- a. All questions must be in writing and must be received by the RCPA no later than 5pm on May 26, 2020. Thereafter the RCPA will enforce a Blackout period, except for clarifications it issues. See attached Blackout Notice Exhibit C.
- b. Any of the following methods of delivering written questions are acceptable as long as the questions are addressed to Chris Cone, and are received no later than the date and time specified above:

Mail: Regional Climate Protection Authority  
411 King Street  
Santa Rosa, California 95404

E-Mail: [chris.cone@rcpa.ca.gov](mailto:chris.cone@rcpa.ca.gov)

- c. Responses: Responses from the RCPA will be provided in writing during the pre-proposal meeting and posted online at this address <<Insert URL>> following the pre-proposal meeting.

## Pre-Proposal Meeting

A voluntary pre-proposal meeting to discuss the questions received related to the RFP shall be held on May 21, 2020, 1:30-2:30 p.m. via online Webinar, in respect of health and safety guidelines regarding avoiding in-person meetings during the COVID19 shelter-in-place order. The Webinar can be accessed through the following.

<<Insert Webinar Link and Call In>>

## RFP and Contract Terms

RCPA's Standard Agreement for Consultant Services is included in Exhibit D as a sample contract for this work. Bidders shall note all exceptions taken to this RFP including the contract terms and conditions of the contract included in Exhibit D. RCPA reserves the right to reject any proposal based on noncompliance with the attached contract terms and conditions.

## **Submittal Procedure**

### **1. Date and Time**

Proposals must be submitted at or before 5:00 p.m. on June 30, 2020.

Proposals received after the above-specified date and time will not be considered.

### **2. Email Submittal**

Proposer shall submit one (1) PDF version with electronic signature, to [chris.cone@rcpa.ca.gov](mailto:chris.cone@rcpa.ca.gov).

### **3. Acceptance of Proposals**

The RCPA reserves the right to:

- a. Accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals or in the selection process;
- b. Request additional information of Proposers at its discretion;
- c. Withdraw this RFP at any time without prior notice and the RCPA makes no representations that any contract will be awarded to any Proposer responding to this RFP; and
- d. The RCPA reserves the right to postpone proposal openings for its own convenience.

### **4. Confidentiality of Proposals**

Proposals received shall remain confidential until the contract, if any, resulting from this RFP has been finally negotiated and notice of intent to award has been issued. Thereafter, all information submitted in response to this request shall be deemed a public record. In the event that the Proposer desires to claim portions of its proposal as exempt from disclosure under the California Public Records Act, it is incumbent on the Proposer to clearly identify those portions with the word “confidential” printed on the lower right-hand corner of the page. RCPA will consider a Proposer’s request for exemption from disclosure; however, RCPA will make its decision based on applicable laws. An assertion by the Proposer that the entire proposal is exempt from disclosure will not be honored. Firms are advised that the RCPA does not wish to receive confidential or proprietary information and those proposers are not to supply such information except when it is absolutely necessary. If any information or materials in any proposal submitted are labeled confidential or proprietary, the proposal shall include the following clause:

[Legal name of proposer] shall indemnify, defend and hold harmless the RCPA, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code §6250 et seq.) arising out of, concerning or in any way involving any materials or information in this proposal that [legal name of proposer] has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.

## **Pre-Contractual Expenses**

Pre-contractual expenses are defined as expenses incurred by Proposer in:

1. Preparing its proposal in response to this RFP;
2. Submitting that proposal to the RCPA;
3. Negotiating with the RCPA any matter related to this proposal; or
4. Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

The RCPA shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

## **Joint Offers**

Where two or more proposers desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. RCPA intends to contract with a single firm and not with multiple firms doing business as a joint venture.

## **Insurance and Agreement Provisions**

The Proposer must satisfy the insurance requirements of the proposed Professional Services Agreement. The successful Proposer will be required to adhere to the provisions, terms, and conditions of the attached standard Professional Services Agreement (Exhibit D). Objections to any provisions must be identified in the proposal. No response will signify that the agreement is acceptable as written.

Unless otherwise authorized by RCPA, the selected consultant will be required to execute an agreement with the RCPA for the services requested within sixty (60) days of the RCPA's notice of intent to award. If agreement on terms and conditions acceptable to the RCPA cannot be achieved within that timeframe, or if, after reasonable attempts to negotiate such terms and conditions, it appears that an agreement will not be possible, as determined at the sole discretion of the RCPA, the

RCPA reserves the right to retract any notice of intent to award and proceed with awards to other consultants, or not award at all.

## **Levine Act**

The selected consultant team will be required to disclose on the record any contribution of \$250.00 or more which they have made to an RCPA Director within the twelve-month period preceding submission of the RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed, you must provide written notice of the date, amount and receipt of the contribution(s) in writing to the RCPA Executive Director, Suzanne Smith. This information is required before the RCPA will execute any contract.

## **Lobbying**

Any firm submitting a proposal or a party representing a firm shall not influence or attempt to influence any member of the selection committee, any member of a city council within Sonoma County, the Board of Supervisors, any member of the RCPA Board of Directors or any employee of the RCPA, with regard to the acceptance of a proposal. Any party attempting to influence the RFP process through ex-parte contact may be subject to rejection of their proposal.

## **SECTION 3: EVALUATION AND AWARD**

### **Evaluation Procedure**

An Evaluation Committee will be appointed to review all proposals received. The committee will be composed of RCPA staff and may include outside personnel with relevant experience. The committee members will read the proposals separately then convene to discuss and review the written proposals. Each member of the selection panel will then evaluate each proposal using the criteria identified below to arrive at a “proposal score” in the range of 0 to 100 for each proposal. A list of top ranked proposals will be developed based upon the totals of each committee member’s score for each proposal.

RCPA employees will not participate in the selection process when those employees have relationships with a person or entity submitting a proposal which would subject those employees to the prohibition of Section 87100 of the Government Code. Any firm submitting a proposal who has such a relationship with a RCPA employee who may be involved in the selection process shall advise the RCPA of the name of the RCPA employee in the proposal.

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

The Evaluation Committee will review all proposals submitted on time. The committee will evaluate the proposals and make a selection based on the following criteria:

- Relevant experience of the key personnel assigned to the program (up to 10 points)
- Qualifications of the Firm, including relevant experience with programs of this type (up to 10 points)
- Experience delivering Program Operator or Administrator services or similar types of programs (up to 15 points), including:
  - Experience of firm and of key staff with administering a residential energy efficiency, water conservation, or energy project financing (which ideally includes comparable site-specific project assessments and customer service)
  - Experience of firm and of key staff working with contractor training, business development or lead sourcing, or other workforce development activity for building professionals
- Clarity on approach to complete all tasks, including schedule, budget, and scope of work (up to 20 points)
- Cost Proposal (up to 20 points)
- Conveys ability to implement a successful Water Upgrades \$ave program (25 points)

During the evaluation period, the RCPA may interview some or all of the proposing firms. Interviews will be scheduled during the period of July 10, 2020 through July 11, 2020. No other interview dates will be provided; therefore, if a Proposer is unable to attend the interview on this date its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Proposer after which the evaluation committee will ask questions related to the firm's proposal and qualifications. The evaluation committee may request one or more second interviews if required to make their final selection. The committee will use pre-established criteria during the interview process to score and make their final recommendation.

RCPA reserves the right to select a consultant based solely on written submittals and not convene oral interviews. If oral interviews are necessary, the selected Proposer will be requested to make a formal presentation. The Evaluation Committee will recommend one bidder from those interviewed. The recommendation will then be forwarded to the Executive Director for action.

RCPA reserves the right to select the proposal that in its sole judgment best meets the needs of the RCPA.



## **Award**

Acceptance of a proposal or other material during the selection process does not constitute a contract and does not obligate RCPA to award funds. Funding is subject to final contract approval by the RCPA Board of Directors. RCPA reserves the right to reject any and all responses without penalty and to act in the best interest of RCPA. RCPA will evaluate the proposals received and will submit the proposal considered to be the most competitive to the RCPA Board of Directors, for consideration and selection. RCPA may also negotiate contract terms with the selected Proposer prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously and, thereafter, to award a contract to the Proposer offering the most favorable terms to RCPA.

Negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain Proposer's most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

## **Notification of Award**

Proposers who submit a proposal in response to this RFP shall be notified by email regarding the firm who will be recommended for award of the contract. Such notification will be made ten (10) days before the date the contract is awarded.

## **SECTION 4: PROTESTS**

### **Filing of Protest**

Any directly affected party who is aggrieved in connection with the solicitation or award of a contract may file a protest regarding the procurement action.

Such protest must be filed in writing via email to [waterbillsavings@rcpa.ca.gov](mailto:waterbillsavings@rcpa.ca.gov)  
Include in the subject line: Attn: Suzanne Smith, RCPA Executive Director

Protests must be filed within five (5) calendar days from the date notice of intent to award is issued. Failure to timely file a protest shall constitute a waiver of any right to protest. Untimely protests will not be accepted or considered. Any protest shall:

- State in detail each and every ground asserted for the protest, citing to the law, rule, local ordinance, procedure, or bid provision on which the protest is based; and
- Identify the remedy sought.

**Note:** Specification related protests must be fully supported by technical data, test results, or other pertinent information that a rejected product or service offered is equal to or better than the specification requirement

## **Protest Resolution Process**

### **Informal resolution**

After receiving a protest, the Executive Director will, at the earliest convenience, contact the protesting party to seek informal resolution and/or to clarify the issues.

### **Written response**

Within fourteen (14) calendar days following contact with the protesting party for informal resolution, the Executive Director shall provide a written response to the protesting party. The letter constitutes the RCPA's final decision on the protest and shall be considered the final agency action.

### **No Stay of Procurement Action during a Protest**

Nothing in these Policies and Procedures shall be deemed to prevent RCPA from proceeding with negotiations or awarding a purchase order or contract while a protest is pending.

## **Remedies after an Award**

If, after an award, it is determined by the Executive Director that a solicitation or award of a contract is in violation of this RFP or the protest procedures outlined above, then the following criteria will be employed to resolve the dispute.

1. If the person or entity awarded the contract or purchase order has not acted fraudulently, or in bad faith:
  - The contract or purchase order may be ratified and affirmed, provided it is determined that doing so is in the best interest of RCPA; or
  - The contract/purchase order may be terminated.
2. If the person or entity awarded the contract or purchase order has acted fraudulently or in bad faith, the contract or purchase order shall be declared null and void.

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

## **SECTION 5: TENTATIVE SCHEDULE**

The following is a tentative program schedule and milestone requirements for the program.

**Release RFP:** May 13, 2020  
**Pre-Proposal Meeting:** May 21, 2020  
**Written Questions:** May 26, 2020  
**Proposals Due:** June 30, 2020, by 5:00 p.m.  
**Interview Dates:** July 10, 2020 through July 11, 2020  
**Notice of Intent to Award:** July 12, 2020  
**Contract Approval:** August 20, 2020  
**Kick-Off Meeting:** tentatively week of August 18, 2020  
**Program Completion:** no later than December 31, 2022

## **EXHIBIT A: DRAFT SCOPE OF WORK**

### **Program Objective**

The program objective is to make water conservation easy with an inclusive financing on-bill offer that eligible utility customers accept and trust. Between 2020 and 2025, the program aims to enroll 16 water utilities and install projects at over 8,600 single family properties and in 2,580 multifamily units.

Operator will be responsible for daily implementation of the Program. This includes services to meet the following individual objectives:

- Work in partnership with RCPA and BayREN member agencies to finalize Water Upgrades \$ave protocols and processes to ensure the success of the Program for all parties, including most critically water customers.
- Outreach and engagement with potential Participants that results in signed Participant Agreements and completed projects.
- Ensure Improvements installed at Participants' properties are appropriate, cost effective, and correctly installed.
- Ensure paperwork and data are complete, accurate, and available in real time.
- Provide excellent Customer Service.

The list of Operator duties itemized below are explained in more detail in the Program Manual. Documents, tools, and forms referenced in this Scope of Services may also be included with the Program's Master Agreement, Participant Agreement, and or Contractor Agreement.

On behalf of BayREN and its parent organization ABAG, the RCPA will oversee Operator activities.

### **Program Resources**

The Program will provide and manage a Program-supplied Customer Relationship Management (CRM) platform to automate program document processing, contractor referrals, project tracking, customer service, and reporting. The Program will also provide the Program brand, marketing plan, and outreach materials. Program will also provide initial Contractor recruitment activities to secure engagement with at least two contractors per Partner Utility territory ready to commit to the Contractor Scope of Work (attached as Exhibit F) drafted by the Program and engage with the

Program Operator on negotiation and signature of the Contractor Agreement finalized by the Operator.

### **Task A: Program Operator Onboarding**

The Operator staff will:

- Attend trainings for Program marketing, Customer Relationship Management (CRM) platform, Contractor training, Utility customer service staff training (i.e., for all staff who may be called by program participants and possible participants) and Program reporting.
- Identify and communicate any concerns for performing or enforcing the Operator's scope of work and the requirements of the Program Manual, Participant Agreement, and Contractor Agreement. Recommend suggestions for concerns raised and work with RCPA and ABAG to resolve within bid price.
- Confirm access to and ability to use CRM to submit sample projects for payment. Confirm alignment with and ability to follow data security protocols.
- Work with RCPA to approve to form the Contractor Agreement template the Operator will be executing with Contractors.
- Sign and execute Contractor Agreements with at least two Program Contractors for Program launch with each Partner Utility.
- As required based on location of Partner Utilities, establish purchasing account at local distributor(s) or retailer(s) for multifamily Participants pursuing the Do-It-Yourself Pathway.

### **Deliverables**

- Written memo identifying any concerns, and for identified concerns suggestions for resolution, for performing or enforcing the Operator's scope of work and the requirements of the Program Manual, Participant Agreement, and Contractor Agreement.
- Two rounds of Sample Project data submitted through the CRM.
- Two Contractor Agreements, executed prior to launch of Program at each Partner Utility.
- Purchasing account at local distributor/retailers appropriate for location of Partner Utilities.
- Miscellaneous set up needs and documents identified by the Operator and RCPA as necessary to support all Tasks B-F (including but not limited to scripts for Customer/Participant calls, email and communication templates, and internal protocols and processes)

## **Task B: Marketing and Customer Service**

The Operator will handle the majority of customer outreach and engagement activities for the Program and approve any Program Contractor marketing to ensure clear communication with potential Customers, provide accurate information, and facilitate installation of Improvements. The purpose of the Operator's engagement with Customers is to ultimately secure signed Participant Agreements and completed projects. BayREN and Partner Utility marketing and outreach activities are intended to drive customers to express interest as warm leads ("Customer Interest") for Operator engagement. Operator is also allowed and encouraged to use RCPA-approved strategies to develop its own leads from Partner Utility provided Eligible Customer and High User lists. Operator staff will field all Customer Interest inquiries, responding within at least one business day; resolve issues in a timely and professional manner; and be available by phone and email.

The Operator will:

- Maintain branding and styling guidelines and approve marketing materials in accordance with the Program's branding and styling protocols and guidelines to ensure brand and styling consistency.
- Support implementation of any public marketing campaigns including work with BayREN and its consultants and partners to define goals, identify outreach channels, and implement marketing activities as approved.
- Respond to all contractor inquiries about the Program and complete record in CRM.
- Perform Customer Intake by responding to all Customer Interest inquiries about the Program. Explain benefits of Program. Depending on Customer/Contractor interest, the Operator may send the Customer/Customer a Program brochure and FAQ or schedule another call. For Customers interested in proceeding with Program, confirm with customer the name of the customer of record and property owner if different and best point of contact.
- Complete record of Customer Intake for all interested Customers.
- Use bi-annual Customer lists provided by Partner Utilities and follow up communications with Utilities as necessary to verify Customers are eligible for the Program and assign a Program Contractor or provide them a list of Program Contractors as requested.
- Support the designing of Participant satisfaction surveys and issuing surveys to participants as requested by the Partner Utility or RCPA (survey needs may be streamlined into the post-installation phone verifications in Task E2 consistent with discussions with RCPA).

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

Deliverables

- Participation in RCPA-directed efforts to finalize and provide ongoing consultation on the marketing plans and collateral/campaigns for the overall Program and at individual Partner Utilities.
- Response to Customer Interest/warm leads from Program within 1 business day.
- Records for RCPA-approved strategies for optional Operator initiated efforts to develop its own leads of interested customers.
- Records of all Contractor Inquiries tracked in the Program CRM.
- Records of all Customer Intake milestones tracked in the Program CRM.
- Supporting Participant satisfaction surveys, including to Single Family, Multifamily, and Multifamily DIY Participants.

**Task C: Program Contractors**

The Operator will contract with, manage, and pay approved Program Contractors to provide project assessment, installation, and inspection services.

The Operator will:

- Certify Program Contractors, including answering questions about and facilitating any negotiation of terms with the contractor. Arrange for signing of the Contractor Agreement.
- Train contractors to adhere to Program standards. Verify and maintain record of contractor license information and status, insurance coverage, and proof of bonding that protects owners/Customers and RCPA.
- Forward verified copies of these documents to RCPA, which will maintain signed copies of the agreements including Program Contractor Agreement exhibits, Certificates of Insurance, proof of bonding, etc. in a file for each contractor.
- Ensure all agreements remain in force throughout the Program and, if necessary and in consultation with RCPA, de-certify Program Contractors who fail to adhere to the requirements in their agreements.

Deliverables

- Maintaining list of Certified Program Contractors and associated records as necessary to provide services for customers at each Partner Utility.
- Contractor Trainings for Program
- Payment to Contractors for approved projects and repairs

### **Task D: Program-Provided Customer Relationship Management Platform**

Operator will enter Program data as necessary and ensure secure storage of data in the Program–provided and -managed Customer Relationship Management (CRM) system and will ensure that data is available to Partner Utilities and RCPA.

The Operator will:

- Use the provided CRM for marketing and participant data management including but not limited to tracking marketing outreach; verifying participant qualification; maintaining lists of current, potential, and unqualified participants; maintaining utility rate data; reviewing and verifying calculations for participant On-Bill Charge; generating necessary agreements and forms for participants and contractors; reporting Participant On-Bill Charges; and reporting project performance to appropriate parties.
- Ensure that staff are trained in how to use the CRM and that such staff understand Program requirements and security protocols for working with the CRM and with transfers (import or export) between the CRM and other Program communications.
- Report broken features or other errors in the CRM to RCPA so that any issues can be addressed quickly and not interfere with Program operation.

Deliverables

- Timely reporting of broken features or other errors in the CRM and coordination to resolve issues.

### **Task E: Improvement Installation Oversight**

Operator is responsible for approving all projects prior to any work being done; for making sure Customers understand the Program and the basis for savings estimates; for ensuring that all Program efficiency improvements (Improvements) meet Program requirements and are installed according to manufacturer specifications and local, state, and federal building code; and for ensuring Program project calculations meet the 80 Percent Rule (the On-Bill Charge is capped at 80 percent of the estimated savings and the duration of charges is capped at 80 percent of the useful life of the upgrade) and performing quality control inspections after project installation.

#### **TASK E.1: PRE-PROJECT QUALIFICATION**

##### **Customer Pre-Qualification:**

The Operator will perform the following duties to pre-qualify the Customer:



Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

- Identify qualifying Improvements (e.g., shower and toilet usage, turf area, etc.) with brief questions.
- Identify conditions that might preclude installations (e.g., rotten floor under toilet or no interest in drought tolerant landscaping).
- Provide details for proposed Customer project by getting information during the call. Fill out the Program Data Sheet to determine estimated net savings, estimated charge and gross savings, estimated total on-bill costs and cost recovery period.
- Review the mechanics of participation.
- For Customers referred to Program by a Program Contractor, the Operator will verify:
  - That no other savings or performance claims beyond those approved by the Program have been made by Program Contractor;
  - that Program Contractors abide by up-selling limitations; and
  - that Participants received referrals to relevant efficiency and energy programs, including applicable rebate programs.

In addition, for Multifamily Customers who are decision makers for a building:

- Discuss options for working with Program Contractor (standard pathway) or a Do-It-Yourself contractor (DIY pathway) and the benefit of using Program Contractor for scoping work via a site visit.
- If the Participant chooses the standard pathway, send Program Intent to Participate form and upon receipt of signed Intent form, select Program Contractor for a site visit and assist in scheduling the site visit. Work with Program Contractor to receive and review details of the site visit<sup>2</sup>.
- If Participant chooses the DIY pathway, send Program Intent to Participate Form and, upon receipt of signed Intent form, schedule, conduct or have a Program Contractor conduct an on-site screening for 100 percent of building units to confirm qualifying Improvements, answer Participant questions, and prepare scope of eligible Improvements.

Deliverables

- Pre-Project Customer Qualification for Single Family.
- Pre-Project Customer Qualification for Multifamily Standard Pathway and Multifamily DIY Pathway.

---

<sup>2</sup> See Water Upgrades \$ave Program Manual, Section 3.4.7: Pre-Installation Site Visit.

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

- Multifamily and DIY Participants sent Intent to Participate form.
- Coordination of Multifamily and DIY Site Visits.

**Pre-Installation Approval and Agreement Issuance:**

For eligible Customers who have received a Participant Agreement, the Operator will perform the following duties before approving an installation at the Customer's location (including single family, multifamily, and commercial).

Pre-Installation APPROVAL DUTIES: For all Customers the Operator will use Partner Utility records and telephone or Pre-Installation Inspections to verify that:

- The Customer is the property owner or that the Customer names the property owner, who must also sign the Participant Agreement.
- The Customer is the utility Customer of record or an individual authorized to sign the Participant Agreement at the location.

Customer Understanding: Ensure the Customer understands all program features, benefits, and obligations (e.g., as defined in the Participant Agreement).

Pre-Installation INSPECTION DUTIES: Operator is responsible for determining which projects receive inspections. The Operator will conduct pre-installation inspections for any Contractor's first project, at least 10 percent of Participant project sites and 100 percent of building units at multifamily DIY project sites. The Operator will:

- Verify the pre-installation property conditions, to determine whether inputs Contractors report in the Data Sheets are identical to the conditions noted by the Operator.
- Verify that the Improvements proposed for installation are possible (e.g., there are no pre-existing conditions that prevent Improvement installation)
- Update Data Sheets and Approved Improvements Form, if necessary.

Documentation: Populate a Participant Agreement and Cover Letter and send to Customer for review. Require Customer to send signed Participant Agreement to Operator. Operator may use all methods approved in the Program Manual to secure and store signed Agreements, including but not limited to DocuSign.

Deliverables

- Pre-Installation Approvals for Single Family, Multifamily Standard Pathway, and Multifamily DIY Pathway

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

- Pre-Installation Inspections for Single Family, Multifamily Standard Pathway, and Multifamily DIY Pathway
- Issued Participant Agreements (via DocuSign and other approved methods) and Participant follow up

**Agreement Execution, Contractor Coordination, and Project Oversight:**

Once Operator has received a signed Participant Agreement, Operator will:

- Request from Partner Utility a record of the last 12 months of water utility bills for this location and place record in Participant's file. If RCPA or Partner Utility receives copies of PG&E's energy billing for a Participant, the Operator will add a copy to its Participant's file.
- Verify that Participant Agreement is signed by Customer, Owner if different, Operator, and any other required parties as established in the Agreement and Program Manual.
- Verify proposed Improvements for any specific Participant project meet program requirements and use the program Data Sheet to ensure project will deliver sufficient utility bill savings to meet the program's 80 Percent Rule. Finalize and execute the Participant Agreement.
- For Participants recruited by Program marketing, complete Contractor Coordination Duties for Participants in accordance with Participant confirmation protocols for Program Marketing leads and Program Contractor leads.<sup>3</sup>
- Send the executed Participant Agreement to Participant and Program Contractor with written approval to start work.
- Monitor communications with Participant and Program Contractor to track status of the installation visit.
- Review requested change orders and issue and record approvals consistent with Program requirements.

Deliverables

- Executed Participant Agreements
- Contractor Coordination for Customers Operator recruited by Program Marketing and without a stated preference for a Program Contractor
- Issued Change Orders and additional Project Oversight as required

---

<sup>3</sup> See Water Upgrades \$ave Program Manual, Section 3.2.4: Contractor Recruitment, Support, and Dispute Resolution.

## **TASK E.2: POST-PROJECT QA/QC INSPECTION**

The Operator will review all required completed project forms submitted by Program Contractors and ensure all work has been completed in accordance with the Participant Agreement(s) and that Project Inputs in the CRM accurately reflect pre- and post-installation conditions and the Participant's desired scope of work.

Contractor Payment Approval: Prior to approving Program Contractor payment, the Operator will:

- Complete post-installation inspection verifications, which will be carried out through an onsite visit for the Program Contractor's first completed project and for a minimum 10 percent of total completed projects, with the remaining project post-installation inspection duties performed by phone with Participant.
- For multifamily Improvements installed through the DIY pathway, the same protocols for Quality Assurance/Quality Control (QA/QC) inspections will be followed. However, because the Participant used their own staff or contractor to install Improvements, the Operator must make a good faith effort to inspect 100 percent of building units for all completed DIY projects. The Operator will notify DIY Participant of the reason(s) for any failed inspections and will notify the Participant that it is their responsibility to fix any failures.
- Operator will verify project completion and site conditions according to Program protocols.<sup>4</sup>

Verification Discrepancies: Perform in a timely manner and as necessary activities to address discrepancies between the Participant Agreement and Participant's comments or observed conditions prior to approving Program Contractor payment.<sup>5</sup>

DIY Project Issues: For multifamily DIY projects, if Participant's staff or contractor did not correctly install approved Improvements, did not follow installation protocols, or did not provide appropriate documentation, Operator will notify Participant of the specific failure(s) that must be resolved by Participant. If Participant resolves failures, Program Operator shall complete Project Close Out activities as identified below. If Participant does not resolve failures, payment for approved Improvements shall be due per the terms of the Participant Agreement.

---

<sup>4</sup> See Water Upgrades \$ave Program Manual, Section 3.2.6: Contractor Installation QA/QC.

<sup>5</sup> See Water Upgrades \$ave Program Manual, Section 3.2.4: Contractor Recruitment, Support, and Dispute Resolution; Section 3.2.6: Contractor Installation QA/QC, and Section 3.2.7: Project Close Out.

PROJECT CLOSE-OUT ACTIVITIES: The Operator will:

- Ensure any dispute with Program Contractors is resolved and documented (per requirements in the Program Manual) and that the Program Contractor has corrected each violation.
- Request RCPA staff, after ensuring that work has been satisfactorily installed, to issue payments twice-monthly to Operator for its services and for Operator to make payments to Contractors.
- Supply RCPA/Partner Utility with copies of the Participant Agreement, and relevant Program forms, for each Participant in the manner dictated by RCPA.
- Sign, notarize, and file the Notice of Efficiency Charge with the location's property records.
- Notify appropriate Partner Utility to initiate billing of On-bill Charge (including the amount and type of charges) no less than 45 days after this notice and on the first full billing cycle following verification of Program Contractor's installation of the Improvements at the location.

Deliverables

- Post-installation on-site verifications for Single Family, Multifamily Standard Pathway, and Multifamily DIY Pathway
- Post-installation phone verifications
- Support to resolve discrepancies and disputes
- Close out final Participant Agreement and Forms, including filing of the Notice of Efficiency Charge with the location's property records

**Task F: Program Management, Data Oversight, Reporting, and Ongoing Customer Support**

Operator is responsible for making sure that all agreements are complete and signed, all forms required for a specific job are complete and accurate (and signed, if appropriate), and that all data on forms and agreements are correct based on quality control verification. Estimated Customer savings and On-Bill Charges will be based on the information in these agreements and forms.

The Operator is also responsible for ongoing customer support services to Participants and Successor Customers taking service at locations with installed Improvements so long as On-Bill Charge's at that location are outstanding.<sup>6</sup>

---

<sup>6</sup> See Water Upgrades \$ave Program Manual, Section 3.2.8: Project Close Out and Section 3.2.9: Failed Improvements.

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

For Program Management, Data Oversight, and Reporting, the Operator will:

- Participate in twice-monthly program management meetings with RCPA. Prepare appropriate updates and report outs on Operator activities and needs. Submit follow up notes, action items, and requested data in a timely manner.
- Oversee maintenance of records of Customers who were solicited to participate and declined, who received Participant Agreements and did not sign them, and who participated in the Program, including answers to any Program survey questions.
- Maintain complete electronic record of Participant's files, including Participant Agreement; all Program forms; water and billing records; documentation of any complaints, disputes, and their resolution, and Participant praise or comments. Document all Improvement failure reports and warranty calls using Service Request Form. Copies of completed forms will be placed in each Participant's file with duplicates sent to the appropriate Partner Utility.
- Provide RCPA with twice-monthly reports on Program activity and billing. Pre-formatted reports and queries from the Program-provided CRM should enable the majority of this reporting.
- Provide RCPA with data formatted as required CPUC regulatory reporting on a monthly, quarterly, and annual basis.
- Provide RCPA with any records, suggestions for workflow enhancements, communications, or other relevant information to enable it to evaluate and ensure the integrity of the Program.
- Ensure all Program forms are submitted, filled out correctly, and signed.

For ongoing Participant and Customer Support, the Operator will:

- Provide assistance if Improvements fail (i.e., implementing cost-effective repairs or payment cessation) for reasons other than Owner or Tenant fault.
- Ensure Contractors fulfill their warranty obligations.
- Notify appropriate Partner Utility when to stop On-bill Charges if Improvements fail, when to restart Charges after repairs are completed, and any extension of the Participant's On-Bill Charge to cover repair costs not covered by Contractor or Improvement's manufacturer warranty.
- Determine payments to Program Contractors for Improvement repairs, request payments from RCPA, and issue payments to Contractors.
- Provide same ongoing support to Successor Customers at locations with outstanding On-Bill Charges

Request for Proposals  
BayREN Water Upgrades \$ave Program  
Program Operator

## Deliverables

- Follow up notes, action items, and requested data for twice-monthly program management meetings
- Oversee record of Customers and Participants contacted by Program
- Provide regular monthly reports on Program activity and billing
- Provide RCPA with data formatted as required CPUC regulatory reporting on a monthly, quarterly, and annual basis.
- Records of ongoing Participant and Customer support

## Program Schedule

Water Upgrades \$ave is targeted to launch customer services in summer 2020. Utility enrollment is underway and program funding has been secured. As of the release date of this RFP however, the impact of the Covid-19 Pandemic on this target timeline is still unknown. Regardless of if and how public health advisories delay the launch of customer services, the Program will generally strive to adhere to the following revised schedule:

Activity	Pre-COVID 19 Schedule	Revised Schedule
Issue Program Operator RFP	March 2020	May 2020
Contract with selected bidder	April 2020	August 2020
Onboard Operator and initial Contractors	May 2020	August 2020
Launch Program marketing	May 2020	September 2020
Launch Customer services	June 2020	September 2020

## **EXHIBIT B: COST EXERCISE TEMPLATE**

Bidders are required to submit a Cost Exercise using the Microsoft Excel “Exhibit B Cost Proposal Template” as posted here: <<Insert URL>>

Tasks and activities proposed as lump sum, milestone, and time and materials billing will be paid upon satisfactory completion of the activity.

Tasks and activities proposed as Pay for Performance for completed Single Family, Multifamily, and Multifamily DIY projects shall be proposed according to the quantity of units estimated for Year One (1) of the Program. Bidders should assume the quantities for each activity as pre-populated in the Template. This exercise will be used to develop, in negotiation with selected bidders, a per-project price to be paid to the bidder for completed Single Family, Standard Pathway Multifamily, and DIY Pathway Multifamily projects.

Bidders must submit a Cost Exercise using, and only using, the stated assumptions and activities in the Template. As appropriate, Bidders may propose a second alternate Cost Exercise with additional approaches and strategies that the bidder believes will improve the Program, services offered, and or Bidder’s ability help the Program meet its goals.

Assumptions used by the Program to develop this Template include Year One (1) activities and project volume of:

- 800 Single Family Customers completing Customer Intake
- 400 Single Family Participants completing Projects
- 24 Multifamily Customers completing Customer Intake, with each Multifamily site assumed to have 20 residential units
- 6 Multifamily Participants completing Project, including:
  - 4 Standard Pathway Multifamily Projects
  - 2 DIY Pathway Multifamily Projects



## **EXHIBIT C: BLACKOUT NOTICE**

Upon release of this RFP, the Executive Director hereby directs all personnel associated with the RCPA to refrain from communicating with prospective Proposers and to refer all inquiries to the Executive Director or other authorized representative. This procedure is commonly known as a “blackout notice” and shall be imposed with the release of the RFP.

Proposers shall refrain from contacting the members of the RCPA Board of Directors regarding this RFP during the evaluation process. Any party attempting to influence the RFP process through ex parte contact may have their proposal rejected.

The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the RFP.

Blackout notices are not intended to terminate all communication with Proposers. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

## EXHIBIT D: STANDARD AGREEMENT FOR CONSULTING SERVICES

### AGREEMENT FOR CONSULTING SERVICES

This agreement ("Agreement"), dated as of \_\_\_\_\_, 20\_\_ ("Effective Date") is by and between the Sonoma County Regional Climate Protection Authority, a political subdivision of the State of California (hereinafter "RCPA"), and \_\_\_\_\_ (hereinafter "Consultant").

### R E C I T A L S

WHEREAS, Consultant represents that it is a duly qualified, experienced in the preparation of transit integration and efficiency studies and related services; and

WHEREAS, in the judgment of the Sonoma County Transportation Authority, it is necessary and desirable to employ the services of Consultant for technical assistance in development of the Vision Zero Sonoma County Data Dashboard.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### A G R E E M E N T

#### I. Scope of Services.

1.1 Consultant's Specified Services. Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "A" and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A", the provisions in the body of this Agreement shall control.

1.2 Cooperation With RCPA. Consultant shall cooperate with RCPA and RCPA staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. RCPA has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by RCPA shall not operate as a waiver or release. If RCPA determines that any of Consultant's work is not in accordance with such level of competency and standard

of care, RCPA, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with RCPA to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### 1.4 Assigned Personnel.

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time RCPA, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from RCPA.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by RCPA to be key personnel whose services were a material inducement to RCPA to enter into this Agreement, and without whose services RCPA would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of RCPA. With respect to performance under this Agreement, Consultant shall employ the following key personnel: \_\_\_\_\_.
- c. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

2. Payment. The total amount payable to the Consultant will include payment for tasks agreed to as time-and-materials milestone billing, payment for the services agreed to as pay-for-performance based on the number of project installations approved by the Consultant, and payment for approved work completed by the Consultant's contractors.

Provided that total payments to Consultant shall not exceed \$ \_\_\_\_\_, without the prior written approval of RCPA, payment shall be made as follows. For all milestone services and incidental costs required hereunder, Consultant shall be paid on a time and material/expense basis in accordance with the budget set forth in Exhibit B. For all pay-for-performance services and incidental costs required hereunder, Consultant shall be paid on a per project basis in accordance with the budget set forth in Exhibit B. Payment for approved work completed by the Consultant's contractors will be paid consistent with the final approved Contractor payment for completed and approved projects.

Consultant shall submit its bills in arrears on a monthly basis in a form approved by RCPA's Auditor and the Executive Director of RCPA. The bills shall show or include: (i) the task(s)

performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any, and (v) number of completed projects for that invoice period. Expenses not expressly authorized by the Agreement shall not be reimbursed.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of RCPA business after presentation of an invoice in a form approved by the RCPA for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the RCPA.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the RCPA shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, RCPA requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If Consultant is qualified, then the RCPA requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Consultant agrees to promptly notify the RCPA of any changes in the facts. Forms should be sent to the RCPA pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide RCPA with either a full or partial waiver from the State of California.

3. Term of Agreement. The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_ unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, RCPA shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, RCPA may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to RCPA all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to RCPA an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

**4.4 Payment Upon Termination.** Upon termination of this Agreement by RCPA, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if RCPA terminates the Agreement for cause pursuant to Section 4.2, RCPA shall deduct from such amount the amount of damage, if any, sustained by RCPA by virtue of the breach of the Agreement by Consultant.

**4.5 Authority to Terminate.** The Board of RCPA has the authority to terminate this Agreement on behalf of the RCPA. In addition, the Executive Director of RCPA, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the RCPA.

**5. Indemnification.** Consultant agrees to accept all responsibility for loss or damage to any person or entity, including RCPA, and to indemnify, hold harmless, and release RCPA, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against RCPA based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on RCPA's part, but to the extent required by law, excluding liability due to RCPA's conduct. RCPA shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes which do not change the scope of work or significantly lengthen time schedules may be executed by the Executive Director of RCPA in a form approved by Counsel. The Board of Directors of RCPA must authorize all other extra or changed work. The parties expressly recognize that RCPA personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the RCPA.

9. Representations of Consultant.

9.1 Standard of Care. RCPA has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by RCPA shall not operate as a waiver or release.

9.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of RCPA and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits RCPA provides its employees. In the event RCPA exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant

expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the RCPA.

9.4 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold RCPA harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case RCPA is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish RCPA with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to RCPA for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by RCPA, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with RCPA disclosing Consultant's or such other person's financial interests.

9.7 Statutory Compliance. Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.8 Nondiscrimination. Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to

nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the RCPA's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 AIDS Discrimination. Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 Assignment of Rights. Consultant assigns to RCPA all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to RCPA in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as RCPA may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of RCPA. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of RCPA.

9.11 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of RCPA. RCPA shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to RCPA all such documents, which have not already been provided to RCPA in such form or format, as RCPA deems appropriate. Such documents shall be and will remain the property of RCPA without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of RCPA.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Content Online Accessibility. RCPA follows the County policy that requires all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.



10.1 Standards. All consultants responsible for preparing content intended for use or publication on a RCPA-managed or RCPA-funded web site must comply with applicable Federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), and the County's Web Site Accessibility Policy located at <http://webstandards.sonoma-county.org>.

10.2 Certification: Consultants must complete the Document Accessibility Certification Form attached hereto as Exhibit D which shall describe how all deliverable documents were assessed for accessibility (e.g. Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check.)

10.3 Alternate Format: When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with RCPA staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s), e.g. embedding the document with alt-tags that describe complex data/tables.

10.4 Noncompliant Materials; Obligation to Cure. Remediation of any materials that do not comply with County's Web Site Accessibility Policy shall be the responsibility of Consultant. If RCPA, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any RCPA-managed or RCPA-funded Web site does not comply with County Accessibility Standards, RCPA will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to RCPA, repair or replace the non-compliant materials within such period of time as specified by RCPA in writing. If the required repair or replacement is not completed within the time specified, RCPA shall have the right to do any or all of the following, without prejudice to RCPA's right to pursue any and all other remedies at law or in equity:

- a. Cancel any delivery or task order;
- b. Terminate this Agreement pursuant to the provisions of Article 4;
- c. In the case of custom EIT developed by Consultant for RCPA, RCPA may have any necessary changes or repairs performed by itself or by another contractor. In such event, contractor shall be liable for all expenses incurred by RCPA in connection with such changes or repairs; and/or

10.5 County's Rights Reserved. Notwithstanding the foregoing, County may accept deliverables that are not strictly compliant with County Accessibility Standards if **RCPA**, in its sole and absolute discretion, determines that acceptance of such products or services is in **RCPA's** best interest.

d. Document Accessibility Certification Form.

11. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits RCPA's right to terminate this Agreement pursuant to Article 4.

12. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

13. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: RCPA : Suzanne Smith, Executive Director  
Sonoma County Transportation Authority  
411 King Street  
Santa Rosa, CA 95404

TO: CONSULTANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile

transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

#### 14. Miscellaneous Provisions.

14.1 No Waiver of Breach. The waiver by RCPA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and RCPA acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and RCPA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

14.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

14.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and

exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

14.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: \_\_\_\_\_

RCPA: SONOMA COUNTY TRANSPORTATION  
AUTHORITY

\_\_\_\_\_  
By: \_\_\_\_\_

CERTIFICATES OF INSURANCE ON  
FILE WITH AND APPROVED AS TO  
SUBSTANCE FOR RCPA:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM FOR RCPA:

By: \_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_

## **EXHIBIT E: PROGRAM MANUAL**

Currently reserved. To access the draft-final Water Upgrades \$ave Program Manual, visit [https://scta.ca.gov/wp-content/uploads/2020/05/Water\\_Upgrades\\_Save-Program\\_Manual-Draft\\_Final\\_2020-0430.pdf](https://scta.ca.gov/wp-content/uploads/2020/05/Water_Upgrades_Save-Program_Manual-Draft_Final_2020-0430.pdf)

## **EXHIBIT F: CONTRACTOR AGREEMENT**

Currently reserved. To access the draft-final Water Upgrades \$ave Contractor Agreement, visit [https://scta.ca.gov/wp-content/uploads/2020/05/Water\\_Upgrades\\_Save-Contractor\\_Agmt-Draft\\_Final\\_2020-0428.pdf](https://scta.ca.gov/wp-content/uploads/2020/05/Water_Upgrades_Save-Contractor_Agmt-Draft_Final_2020-0428.pdf)